2078.

SUPREME COURT OF THE UNITED STATES.

No. 73.

SAMUEL PEARCE, PL'FF IN ER.,

vs.

THE MADISON AND INDIANAPOLIS RAILROAD COMPANY AND THE PERU AND INDIANAPOLIS RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

INDEX.

	Original.	Print.
Declaration	1	1
Defendants' pleas	7	4
Replication to defendants' pleas	28	14
Demurrer to replication	30	15
Amended declaration	37	18
Defendants' demurrers to amended declaration	46	22
Joinder in demurrer	49	23
Judgment	49	24
Appeal prayed	50	24
Appeal bond	50	24
Writ of error	51	25
Citation and service	52	25
Clerk's certificate	54	26
Assignment of errors	54	26

Pleas of the circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and fifty-six: Present, the honorable Elisha M. Huntington, judge of said court.

SAMUEL C. PEARCE vs. THE MADISON AND INDIANAPOLIS RAILROAD Company, and the President and Directors of the Peru and Indianapolis Railroad Company.	Trespass on the case.

Be it remembered, that heretofore, to wit, on the seventh day of April, in the year of our Lord eighteen hundred and fifty-six, the plaintiff, by his attorney, O. H. Smith, esq., filed in the office of the clerk of said court his certain declaration against said defendants, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Indiana.

In the circuit court of the United States.

Samuel C. Pearce, a citizen of the State of Kentucky, plaintiff in this suit, complains of the Madison and Indianapolis Railroad Company, and the president and directors of the Peru and Indianapolis Railroad Company, corporations by the laws of the State of Indiana, and having the principal business office in said State, citizens of the State of Indiana, defendants, in a plea of trespass on the case upon promises.

1st count. For that whereas, heretofore, to wit, on the 7th day of February, in the year 1854, at Madison, to wit, in the circuit aforesaid, the said defendants, by the name and description of the Madison, Indianapolis, and Peru Railroad Company, made their certain joint promissory note in writing, bearing date on the said 7th day of February, in the year 1854, and thereby then and there, for value received, promised, eighteen months after the date thereof, to pay to the order of William McClain, a citizen of the State of Ohio, by the description of Capt. Wm. McClain, one thousand dollars, negotiable and payable at the branch of the State Bank of Indiana, at Madison, without any relief whatever from valuation or appraisement laws, and then and there delivered the said promissory note to the said William McClain, who then and there, for value received, assigned and delivered the same to the plaintiff, a citizen

of the State of Kentucky. And the plaintiff in fact says, that afterwards, to wit, on the 10th day of August, in the year 1855, the day the said promissory note became due and payable, the said note was duly presented at the branch of the State Bank of Indiana, at Madison, for payment, and the same was then and there duly protested for non-payment, of which the defendant had due notice; and the said promissory note, with the interest thereon and cost of protest, still remains due and unpaid.

2d count. And for that whereas also, heretofore, to wit, on the 7th day of February, in the year 1854, at Madison, to wit, in said circuit, the said defendants, by the name and description of the Madison, Indianapolis, and Peru Railroad Company, made their certain other joint promissory note, bearing date on the day and year aforesaid, and thereby then and there, for value received, promised, eighteen months after the date thereof, to pay to the order of William McClain, a citizen of the State of Ohio, by the name and description of Capt. McClain, one thousand dollars, negotiable and payable at the branch of the State Bank of Indiana, at Madison, without any relief whatever from valuation or appraisement laws, and then and there delivered the said promissory note to the said William McClain, who then and there, for value received, assigned and delivered the same to the said plaintiff, being then and there a citizen of the State of Kentucky. And the plaintiff in fact says, that afterwards, to wit, on the 10th day of August, in the year 1855, the said promissory note was duly presented at the branch of the State Bank of Indiana, at Madison, for payment, and the same was then and there duly protested for non-payment, of which the defendants had notice; and the said promissory note, with the interest thereon and costs of protest, still remain due and unpaid.

3d count. And for that whereas also, heretofore, to wit, on the 7th day of February, in the year 1854, at Madison, to wit, in said circuit, the said defendants, by the name and style of the Madison, Indianapolis, and Peru Railroad Company, made their certain other joint promissory note, bearing date on the day and year last aforesaid, and thereby then and there, for value received, promised, twenty-four months after the date thereof, to pay to the order of William McClain, a citizen of the State of Ohio, by the name and description of Capt. Wm. McClain, five hundred dollars, negotiable and payable at the branch of the State Bank of Indiana, at Madison, without any relief whatever from valuation or appraisement laws, and then and there delivered the said promissory note to the said William McClain, who then and there assigned and delivered the same to the said plaintiff, then and there being a citizen of the State of Kentucky. And the plaintiff in fact says, that afterwards, to wit, on the 7th day of February, in the year 1856, the said promissory note was duly presented at the branch of the State Bank of Indiana, at Madison, for payment, and the same was duly protested for non-payment, of which the defendants had notice; and

the said promissory note and every part thereof still remains due and unpaid.

4th count. And for that whereas also, heretofore, to wit, on the 7th day of February, in the year 1854, at Madison, to wit, in said circuit, the said defendants, by the name and style of the Madison, Indianapolis, and Peru Railroad Company, made their certain other joint promissory note of that date, and thereby then and there, for value received, promised, twenty-four months after the date thereof, to pay to the order of William McClain, a citizen of the State of Ohio, by the name and description of Capt. William McClain, negotiable and payable at the branch of the State Bank of Indiana, at Madison, one thousand dollars, without any relief whatever from valuation or appraisement laws, and then and there delivered the said promissory note to the said William McClain, who then and there assigned and delivered the same, for value received, to said plaintiff, then and there being a citizen of the State of Kentucky. And the plaintiff in fact says, that afterwards, to wit, on the 9th day of February, 1856, the said promissory note was duly presented at the branch of the State Bank of the State of Indiana, at Madison, for payment, and the same was then and there protested for non-payment, of which the defendants had notice; and the said promissory note, with the interest and protest thereon, still remains due and unpaid.

5th count. And for that whereas also, heretofore, to wit, on the 7th day of February, in the year 1854, at Madison, to wit, at the circuit aforesaid, the said defendants, by the name and style of the Madison, Indianapolis, and Peru Railroad Company, made their certain other joint promissory note in writing, bearing date on the day and year last aforesaid, and thereby then and there, for value received, promised, twenty-four months after the date thereof, to pay to the order of William McClain, a citizen of the State of Ohio, by the name and description of Capt. Wm. McClain, one thousand dollars, negotiable and payable at the branch of the State Bank of Indiana, at Madison, without any relief whatever from valuation or appraisement laws, and then and there delivered the said promissory note to the said William McClain, who then and there, for value received, assigned and delivered the same to the said plaintiff, a citizen of the State of Kentucky. And the plaintiff in fact says, that afterwards, to wit, on the 9th day of February, 1856, the said promissory note was duly presented at the branch of the State [Bank] of Indiana, at Madison, for payment, and the same was then and there duly protested for non-payment, of which the defendants had notice; and the promissory note, with the interest and costs of protest thereon, still remains due and unpaid.

6th count. And for that whereas also, heretofore, on the first day of April, in the year 1856, before the commencement of this action, the said defendants were jointly indebted to the said plaintiff in the sum of ten thousand dollars, for so much money before

ready to verify. Wherefore she prays judgment, &c., as to said counts in the introductory part of this plea specified.

And for a fifth and further plea in this behalf, as to said first, second, third, fourth, and fifth counts of said declaration, the defendant says, actio non, because she says that the said notes were executed by Erastus W. H. Ellis, who was not the president or agent of said defendant when the said notes were given, but was the president of the Madison, Indianapolis, and Peru Railroad Company; and said last-named company was an illegal and invalid company; and the said notes were attempted to be given on behalf *on behalf* of said last-named company. But this defendant says that said notes were given without authority of this defendant, and without authority of said invalid company, but in violation of the express orders of the directors of said last-named company, as plaintiff well knew at the time of the execution of said notes and their assignment to the plaintiff; and this the said defendant is ready to verify. Wherefore she prays judgment, &c., as to said counts in the introductory part of the plea specified.

And for a sixth and further plea in this behalf, as to the first, second, third, fourth, and fifth counts of said declaration, the defendant says, actio non, because the said defendant says that she, said defendant, organized, in the year 1843, as a corporation, under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An act to provide for the continuance of the construction of all or any part of the public works of this State by private companies, and for abolishing the board of internal improvements and the offices of fund commissioner and chief engineer," which said act was duly approved January 28th, 1842. And said defendant had and has no power, authority, or capacity other than granted in said act or in other acts amendatory thereof. And the said defendant says, that having so organized, her road from Madison, Indiana, to Indianapolis, Indiana, was completed in the year 1847 by her, the said defendant. And said defendant, in pursuance of her corporate rights and powers, as above named, used and ran her said road to and between the two points last above named until the first day of January, 1854, at which time there was an attempted consolidation of the two railroad companies named in the declaration in this case. But this defendant says that said attempted consolidation was and is illegal and void, for the reason that only a portion of the stockholders of this defendant consented thereto; and only a minority in number and interest of the stockholders of said Peru and Indianapolis Railroad Company consented thereto. The said invalid company was called and took the name of the Madison, Indianapolis, and Peru Railroad Company, and was intended to extend from the city of Madison, Indiana, to the town of Peru, Indiana, through the city of Indianapolis, Indiana; and Erastus W. H. Ellis was the nominal and de facto president of said void and illegal railroad company, so attempted to be cre-

ated by said consolidation as above named; and the said notes in the declaration described were given by said Madison, Indianapolis, and Peru Railroad Company, (by said Ellis,) in part purchase of the steamboat "David White," the same being a steamboat engaged in running on the waters of the Ohio river. Afterwards, on the day of in the year 1854, the said president and directors of the Peru and Indianapolis Railroad Company, and John Burke, and other stockholders of said company, commenced their suit in the Marion circuit court of the State of Indiana against the said Madison and Indianapolis Railroad Company, and against said Madison, Indianapolis, and Peru Railroad Company, among other things, to set aside and dissolve said pretended consolidation; and such proceedings were had in the said suit, that at the October term of said court, in the year 1855, on the day of November, 1855, and before the commencement of this suit, it was finally ordered, adjudged, and decreed by said court, among other things, as follows, to wit: that the said organization called the Madison, Indianapolis, and Peru Railroad Company was null and void, and was by the court dissolved. And the said Peru and Indianapolis Railroad Company and the said Madison and Indianapolis Railroad Company were adjudged to be each valid and existing independent corporations, notwithstanding said contract of consolidation, and that the supposed contract of consolidation was void and of no effect; and that said supposed contract was then and there, by the said court, set aside and annulled to all intents and purposes. And this defendant says that ever since said decree each of said defendants have been and yet are separate and independent corporations, and that said decree ever since and yet is in full force and effect, and unreversed, and that no appeal has been taken by either of said defendants from said decree of said Marion circuit court. And this defendant further says, that said plaintiff knew the consideration for which said notes in said counts specified were given previous to and at the time of the said assignment to him; and this the said defendant is ready to verify. Wherefore she prays judgment, &c., as to the said counts in the introductory part of this plea named.

And for a further and seventh plea in this behalf, as to the first, second, third, fourth, and fifth counts of said declaration, this defendant says, actio non, because she says that she is a corporation organized in the manner and for the purposes and by virtue of the authority mentioned in the last above plea; that there was a pretended consolidation of this defendant with the said Peru and Indianapolis Railroad Company, under the said name and style of the Madison, Indianapolis, and Peru Railroad Company, as stated in said last-named plea, but which attempted and pretended consolidation was illegal and utterly void, and was dissolved and declared null and void by the said judgment of said Marion circuit court, for the reasons and in manner stated in said last-named plea. That

after said pretended consolidation, and before the dissolution thereof, to wit, on the 15th day of January, 1854, the acting board of directors of said illegal and pretended corporation purchased an undivided and controlling interest in the steamboat "David White," a steamer running and used on the waters of the Ohio river, of which said interest in said boat said plaintiff was then a part owner. That it was agreed by and between the said directors and the owners and vendors of said interest in said boat, and was a part of the terms of said contract of purchase, that said Madison, Indianapolis, and Peru Railroad Company should pay and secure the purchase-money for the said interest in said boat in the seven per cent. bonds of said last-named company. And this defendant says, that in pursuance of the terms of said agreement, the said directors did pay and deliver to the owners and vendors of said interest in said steamboat the seven per cent. bonds of said last-named pretended company, which bonds were received by said owners and vendors as in full payment and security for said interest in said boat. And this defendant says that neither she nor her directors had power, by her charter, nor had said Madison, Indianapolis, and Peru Railroad Company any power or authority, by law, to purchase, own, or run steamboats. And this defendant further says, that after the making and completion of said illegal and unauthorized purchase of said interest in said steamboat, and after the delivery of the bonds in payment therefor as aforesaid, to wit, on the 7th day of February, 1854, said Erastus W. H. Ellis, who was the acting president of said last-named company, and who was not an officer or agent of this defendant, did, without any right, power, or authority from said Madison, Indianapolis, and Peru Railroad Company, or the directors thereof, and without any authority from this defendant or her directors, take and receive back from said owners and vendors of said boat the bonds so delivered as payment, and in lieu thereof executed and delivered to said William McLean, as agent for said owners and vendors, divers promissory notes, purporting to be the notes of said Madison, Indianapolis, and Peru Railroad Company. And this defendant says, that the promissory notes in said counts mentioned are five of the notes (and not other or different) so executed and delivered to said McLean for said owners and vendors, without authority, and for the illegal purposes aforesaid. Wherefore this defendant says, that said promissory notes mentioned in said counts were given without consideration, and are void; and this she is ready to verify. Wherefore she prays judgment, &c., as to the said counts in the introductory part of this plea specified.

And the said Madison and Indianapolis Railroad Company, as to the sixth count of said declaration, says that she did not undertake or promise in manner and form as the said plaintiff has above in the said count complained against her, the said de-

fendant; and of this the said defendant puts herself upon the country, &c.

DUNN & HENDRICKS, and
YANDES & HINES,
Att'ys for Deft., M. & I. R. R. Co.

And the plaintiff likewise, &c.

O. H. SMITH, *Att'y for Plaintiff.*

And afterwards, to wit, at a circuit court begun and holden at Indianapolis aforesaid, on the twenty-third (23d) day of May, eighteen hundred and fifty-six—present the Hon. Elisha M. Huntington, judge of said court—the parties, by their counsel, come, and the Madison and Indianapolis Railroad Company, and file their several pleas in these words, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES
For the District of Indiana.

THE PRESIDENT AND DIRECTORS OF THE Peru and Indianapolis Railroad Company, impleaded with the Madison and Indianapolis Railroad Company,
ads.
SAMUEL C. PEARCE.

And the said president and directors of the Peru and Indianapolis Railroad Company, by their attorneys, come and defend the wrong and injury when, &c., and as to the first and second, third, fourth, and fifth counts of said declaration, say that they did not undertake and promise in manner and form as the said plaintiff hath above in the said counts complained against them; and of this they put themselves upon the country.

NEWCOMB, HARVEY, & TARKINGTON,
For said Defendants.

And the plaintiff likewise, &c.

O. H. SMITH, *Att'y for Plff.*

On this 23d day of May, 1856, before me, a notary public of Marion county, Indiana, formally came John D. Defrees, of said county, of lawful age, who, being by me duly sworn, says that he is the president of the board of directors of the Peru and Indianapolis Railroad Company, and that the above and foregoing plea is true in substance and in fact.

JOHN D. DEFREES.

Subscribed and sworn to before [me,] at Indianapolis, in said county, the day and year above written.

JONATHAN S. HARVEY, [SEAL.]
Notary Public.

2d plea to 1st, 2d, 3d, 4th, and 5th counts.

And for a second and further plea, as to the first and second, third, fourth, and fifth counts of said declaration, the said defendants say, actio non, because they say that the said notes in said counts mentioned were given without any consideration whatever, in manner following, to wit: the said notes were given in part for the purchase of the steamboat "David White," which boat was used for and then engaged in running upon the Ohio river, in the transportation of passengers and freight, and that the president and directors of said company had no right, power, or authority by their charter or any other law of this State to purchase, own, or run steamboats, and that said plaintiffs knew the consideration for which said notes were given previous to and at the time of the assignment of the same to him. And defendants aver that said notes were founded on no other consideration than that above stated; and so the defendants say that said notes were given without consideration; and this they are ready to verify. Wherefore as [to] the counts aforesaid they pray judgment.

3d plea [to] 1st, 2d, 3d, 4th, and 5th counts.

And for a further and third plea, as to the said first, second, third, fourth, and fifth counts, the defendants say, actio non, because they say that said notes in said counts mentioned were executed and signed and delivered without any consideration being given therefor to said defendants, as the plaintiff well knew previous to and at the time of the assignment of said notes to him, said plaintiff, and that said notes were not transferred in good faith and upon valuable consideration before due to said plaintiff; and this said defendants are ready to verify. Wherefore, &c.

4th plea to 1st, 2d, 3d, 4th, and 5th counts.

And for a fourth and further plea in this behalf, to the first, second, third, fourth, and fifth counts of said declaration, the defendants say, actio non, because they say that said notes in said counts named were given without any consideration, in the manner following, and for no other consideration, to wit: the said notes were given in part purchase of the steamboat "David White," and that said company had no right, power, or authority by law to purchase, own, or run steamboats, and that the said plaintiff was a part owner of said steamboat, and was jointly interested with said William McClain in all the notes received upon the sale of the five-eighths part of said steamboat; and all of said notes were drawn payable to said Wm. McClain; and that portion of the said notes in the counts above named are a part of the notes received on said sale, as the plaintiff well knew when he received and obtained the same; and so the said notes in the said counts named were given without any consideration; and this said defendants are ready to verify. Wherefore they pray judgment as to the counts aforesaid.

5th plea.

And for a fifth and further plea to said first, second, third, fourth, and fifth counts of declaration, the said defendants say, actio non, because they say that the said notes were executed by Erastus W. H. Ellis, who was not the president or agent of said defendants when the said notes were given, but was the president of the Madison, Indianapolis, and Peru Railroad Company; and said last-named company was an illegal and invalid company, attempted to be formed by an illegal consolidation, without authority of law, of the Madison and Indianapolis Railroad Company and the Peru and Indianapolis Railroad Company; and said notes were attempted to be given by said Ellis on behalf and in the name of said last-named company. But the defendants say that said notes were given without authority from them, and without authority from said illegal and invalid consolidated company, but in violation of the express orders of the directors of said last-named company, as plaintiff well knew at the time of the execution of said notes, and at the time of their assignment to the plaintiff; and this said defendants are ready to verify. Wherefore they pray judgment as to the counts [in] the introductory part of the plea specified.

6th plea.

And for a sixth and further plea to the said first, second, third, fourth, and fifth counts of said declaration, the defendants say, actio non, because they say that the said defendant organized, in the year 184 , as a corporation, under and by virtue of an act of the General Assembly of the State of Indiana, entitled "An act to incorporate the Peru and Indianapolis Railroad Company," which said act was duly approved by the Governor of said State January 19, 1846. And said defendants had and have no power, authority, or capacity other than such as is conferred in said act or in other legislative acts amendatory thereof. And the said defendants say, that the Peru and Indianapolis Railroad Company, having so organized, her road was completed from Peru and Indianapolis in 18 by said defendants. And said defendants, in pursuance of their corporate rights and powers, as above named, used and run her said road to and between the two points last above named until the first day of January, 1854, at which time there was an attempted consolidation of the two railroad companies named in the declaration in this case. But these defendants say that said attempted consolidation was and is illegal and void, for the reason that only a minority of the stockholders of the Peru and Indianapolis Railroad Company consented thereto, and only a portion of the stockholders of said Madison and Indianapolis Railroad Company consented thereto. The said illegal and invalid company formed of said attempted consolidation was called and took the name of the Madison, Indianapolis, and Peru Railroad Company, and was intended to extend from the city of Madison to the town of Peru,

Indiana, through the city of Indianapolis; and Erastus W. H. Ellis was the nominal and de facto president of said void and illegal railroad company, so attempted to be created by said consolidation as above named; and the said notes in the declaration described were given by said Madison, Indianapolis, and Peru Railroad Company, and by said Ellis, in part purchase of the steamboat "David White," the same being a steamboat engaged in running on the waters of the Ohio river. Afterwards, on the day of in the year 1854, the said president and directors of the Peru and Indianapolis Railroad Company, and John Burke, and other stockholders of said company, commenced an action in the Madison circuit court of the State of Indiana against the Madison and Indianapolis Railroad Company, and against said Madison, Indianapolis, and Peru Railroad Company, among other things, to set aside and dissolve said pretended consolidation; and such proceedings were had in said suit, that at the October term of said court, in the year 1855, on the day of November, 1855, and before the commencement of this suit, it was finally ordered, adjudged, and decreed by said court, among other things, as follows, to wit: that the said organization called the Madison, Indianapolis, and Peru Railroad Company was null and void, and was by the court dissolved. And the said Peru and Indianapolis Railroad Company and the said Madison and Indianapolis Railroad Company were adjudged to be each valid and existing independent corporations, notwithstanding said contract of consolidation, and that the supposed contract of consolidation was void and of no effect; and said supposed contract was then and there, by said court, set aside and annulled to all intents and purposes. And these defendants say that ever since said decree each of said companies, to wit, the Madison and Indianapolis and the Peru and Indianapolis Railroad Companies have been and yet are separate and independent corporations, and that said judgment or decree has ever since been and yet is in full effect and unreversed, and no appeal has been taken by either of said defendants therefrom. And these defendants further say, that said plaintiff knew the consideration for which said notes were given previous to and at the time of the assignment thereof to him; and this said defendants are ready to verify. Wherefore, as to the counts in the introductory part of this plea mentioned, they pray judgment.

7th plea.

And for a further and seventh plea to said first, second, third, fourth, and fifth counts, these defendants say, actio non, because they say that said Peru and Indianapolis Railroad Company is a corporation organized in the manner and for the purposes and by virtue of the authority mentioned in the last above plea; that there was a pretended consolidation of said Peru and Indianapolis Railroad Company and the Madison and Indianapolis Railroad Com-

pany, under the said name and style of the Madison, Indianapolis, and Peru Railroad Company, as stated in said last-named plea, but which attempted and pretended consolidation was illegal and void, and was dissolved and declared null and void by the said judgment of said Madison circuit court, for the reasons and in manner stated in said last-named plea. That after said pretended consolidation, and before the dissolution thereof by said decree, to wit, on the 15th day of January, 1854, the acting board of directors of said pretended and illegal company purchased an undivided and controlling interest in the steamboat "David White," a steamer running and used on the waters of the Ohio river, of which said boat the plaintiff was a part owner. That it was agreed by and between the said directors of said illegal corporation and the vendors of said interest in said boat, and was a part of the terms of said contract of purchase, that said Madison, Indianapolis, and Peru Railroad Company should pay and secure the purchase-money for the said interest in said boat in the seven per cent. bonds of said last-named company. And the defendants say, that in pursuance of the terms of said agreement, the said directors did pay and deliver to the owners and vendors of said interest in said steamboat the seven per cent. bonds of said last-named company, which bonds, to the amount of said purchase, *which bonds* were received by said owners and vendors as in full payment and security for said interest in said boat. And these defendants say, that neither the said Peru and Indianapolis Railroad Company, nor her president and directors, had power by her charter or otherwise, nor had said pretended Madison, Indianapolis, and Peru Company any power or authority by law, to purchase, own, or run steamboats. And these defendants further say, that after the making and completion of said illegal and unauthorized purchase of said interest in said steamboat, and after the delivery of the bonds in payment therefor as aforesaid, to wit, on the 7th day of February, 1854, said Erastus W. H. Ellis, who was the acting president of said last-named company, and who was not an officer or agent of these defendants, did, without any right, power, or authority from these defendants, or from said Madison, Indianapolis, and Peru Railroad Company, or the directors thereof, take and receive back from said owners and vendors of said boat the bonds so delivered as payment, and in lieu of said bonds executed and delivered to said William McLean, as agent for said owners and vendors, divers promissory notes purporting to be the promissory notes of said Madison, Indianapolis, and Peru Railroad Company. And these defendants say, that the promissory notes in said counts mentioned are part and parcel of the notes (and not other or different) so executed and delivered to said McLean for said owners and vendors, without authority, and for the illegal purpose aforesaid. Wherefore these defendants say that said promissory notes mentioned in said counts were given without consideration, and are

void; and this they are ready to verify. Wherefore they pray judgment as to said counts in the introductory part of this plea mentioned.

Plea to 6th count.

And the said Peru and Indianapolis Railroad Company, as to the sixth count of said declaration, say that they did not undertake and promise in manner and form as the said plaintiff hath above in the said court complained against them: and of this they put themselves upon the country.

NEWCOMB, HARVEY, & TARKINGTON,
For P. and I. R. R. Co.

And the plaintiff likewise, &c.

O. H. SMITH,
Att'y for Plaintiff.

And afterwards, to wit, on the 24th day of May, in the year eighteen hundred and fifty-six, that being the sixth judicial day of said term as aforesaid, present the same judge as aforesaid, come the parties, by counsel, and the plaintiff files his replication to the pleas heretofore filed by said defendants, in these words, to wit:

And the said plaintiff, for replication to the said second plea of the said Madison and Indianapolis Railroad Company to the said first, second, third, fourth and fifth counts of the declaration, says, precludi non, because he says that said promissory notes were given for a good and valuable consideration; and this they pray may be enquired of by the country.

And the defendant likewise, &c.

To 3d plea.

And the said plaintiff, for replication to the said third plea to the said first, second, third, fourth and fifth counts of said declaration, says, precludi non, because he says that said notes were not given without any consideration, and were not transferred before due, in bad faith, as stated in said plea; and this he prays may be enquired of by the country.

And the defendants likewise, &c.

To 4th plea.

And the said plaintiff, for replication to said fourth plea to said first, second, third, fourth, and fifth counts of said declaration, says, precludi non, because he says that said notes specified in said counts were given for a good and valuable consideration; and this the plaintiff prays may be enquired of by the country.

And the defendant likewise, &c.

To 5th plea.

And the said plaintiff, for replication to said fifth plea to said first, second, third, fourth, and fifth counts of said declaration, says,

precludi non, because he says that said notes were executed by the said Madison and Indianapolis Railroad Company, and the president and directors of the Peru and Indianapolis Railroad Company, by Erastus W. H. Ellis, at the time their president; and this he prays may be enquired of by the country, &c.

And the defendant likewise, &c.

To 6th plea.

And for replication to said sixth plea to said first, second, third, fourth, and fifth counts of said declaration, says, precludi non, because he says that said promissory notes specified in said counts were given by the said Madison and Indianapolis Railroad Company, and the said president and directors of the said Peru and Indianapolis Railroad Company, for a good and valuable consideration; and this he prays may be enquired of by the country.

And the defendants likewise, &c.

To 7th plea.

And the plaintiff, for replication to said 7th plea to said first, second, third, fourth, and fifth counts in the declaration, says, precludi non, because he says that the said promissory notes specified in said counts were not given without consideration or power, and are not void; and this he prays may be enquired of by the country.

And the defendant likewise, &c.

O. H. SMITH,
Att'y for Plaintiff.

And afterwards, to wit, on the 29th day of May, eighteen hundred and fifty-six, that being the tenth judicial day of the November term aforesaid, come the parties, and defendants file their separate demurrers to plaintiff's replication, and thereupon the plaintiff files his joinder to said demurrers, which said demurrers and joinders thereto are in these words, to wit:

Comes the said Madison and Indianapolis Railroad Company, by her attorneys, and says that the said replication to the said second plea of this defendant to the first, second, third, fourth, and fifth counts of this declaration herein, in manner and form as pleaded, and the matter in the said replication contained, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action against said defendant as to said counts, and that this defendant is not bound by law to answer the same; and this she is ready to verify. Wherefore she prays judgment, &c.

And the said defendant states and shows to the court the following cause of demurrer to said above-named replication, that is to say: that the said plaintiff has not in said replication taken or tendered any single or material issue out of or upon the said plea, but attempts to put in issue, to be tried by the country, a new inference or conclusion of law, viz: whether said notes were or were not given

for a good and valuable consideration, without denying, confessing, or avoiding the special matter alleged in said plea, showing a want of consideration; and for that said replication does not traverse, or admit, or avoid any material fact stated in said plea; and that it is also in other respects defective, &c.

And the said Madison and Indianapolis Railroad Company, by her attorneys, says that the said replication to the said third plea of this defendant to said first, second, third, fourth, and fifth counts of the declaration, in manner and form as pleaded, and the matters therein contained, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action against this defendant as to said counts, and that this defendant is not bound by law to answer the same; and this she is ready to verify. Wherefore she prays judgment, &c.

And this defendant states to the court the following cause of demurrer to said last above-named replication, viz: that the same is double and confused, putting in issue two several and distinct matters, namely, whether the said promissory notes were given without any consideration, and also whether they were transferred before due in bad faith, as stated in said 3d plea; and that said replication is in other respects defective.

And the said Madison and Indianapolis Railroad Company, by her attorneys, says that the said replication to the said fourth plea of this defendant to the said 1st, 2d, 3d, 4th, and 5th counts of the declaration, in manner and form as pleaded, and the matters and things therein contained, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action against this defendant as to said counts, and that this defendant is not bound by law to answer the same; and this she is ready to verify. Wherefore she prays judgment, &c.

And this defendant states to the court the following cause of demurrer to said last above-named replication, viz: the said plaintiff has not taken or tendered any single or material issue out of or upon the said 4th plea, but attempts to put in issue, to be tried by the country, a new conclusion of law, viz: whether said promissory notes were given for a good and valuable consideration, without denying, confessing, or avoiding the special matter alleged in said plea, showing a want of consideration; and for that said replication does not traverse, or confess, or avoid any material fact stated in said plea; and that it is also in other respects defective.

And the said Madison and Indianapolis Railroad Company, by her attorney, says that said replication to the fifth plea of this defendant to the 1st, 2d, 3d, 4th, and 5th counts of the declaration, in manner and form as above pleaded, and the matters in said replication contained, are not sufficient in law for the plaintiff to have or maintain his aforesaid action as to said counts against this defendant; and this she is ready to verify. Wherefore she prays judgment, &c.

And this defendant states and shows the following cause of demurrer in said replication: does not deny, admit, or avoid the special matter in said plea alleged, or any fact stated in said plea; and it is otherwise defective.

And the said Madison and Indianapolis Railroad Company, by her attorneys, says that the said replication to the said sixth plea of this defendant to the 1st, 2d, 3d, 4th, and 5th counts of the declaration, in manner and form as above pleaded, and the matters in said replication contained, are not sufficient in law for the plaintiff to have or maintain his aforesaid action against this defendant as to said counts, and that this defendant is not bound by law to answer the same; and this she is ready to verify. Wherefore she prays judgment, &c.

And this defendant states to the court the following cause of demurrer to said last above-named replication, viz: that said plaintiff has not taken or tendered any single or material issue out of or upon the said sixth plea, but attempts to put in issue, to be tried by the country, a new conclusion of law, viz: whether said promissory notes were given for a good and valuable consideration, without denying, confessing, or avoiding the special matter alleged in said plea, showing a want of consideration; and for that said replication does not traverse or confess and avoid any material fact stated in said plea; and for that said replication is in other respects defective.

And said Madison and Indianapolis Railroad Company, by her attorneys, says that the said replication to the said seventh plea of this defendant to said 1st, 2d, 3d, 4th, and 5th counts of the declaration, and the matters in said replication contained, in manner and form as pleaded, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action against this defendant as to said counts, and that this defendant is not bound to answer the same; and this she is ready to verify. Wherefore she prays judgment, &c.

And this defendant states to the court the following cause of demurrer to said last above-named replication, viz: that said plaintiff has not in said replication denied, confessed, or avoided the special matter alleged in said plea, showing a want of consideration, but instead thereof has answered vaguely and aside from the allegations of said plea, that said promissory notes were not given without consideration.

And also for that said plaintiff has not in said replication denied, confessed, or avoided the special matter alleged in said plea, showing a want of power to make said notes, but instead thereof has averred generally that said notes were not given without power, and are void.

And also for that said replication does not deny, confess, or

avoid any material fact stated in said plea; and for that said replication is in other respects defective.

DUNN & HENDRICKS,
YANDES & HINES,
Att'ys for Mad. & I. R. R. Co.

And the plaintiff says that the replications above filed are good and sufficient in law severally; and this he is ready to verify. Wherefore he prays judgment.

O. H. SMITH,
Att'y for Plaintiff.

And afterwards, to wit, on the second day of June, in the year aforesaid, that being the thirteenth judicial day of the said May term as aforesaid, the parties by their attorneys come, and the plaintiff asks and obtains leave to withdraw his joinder in demurrer, which he now does, and leave is granted him to amend his declaration; and this cause is continued until the next term of this court.

And afterwards, to wit, at the July rules of said court, to wit, the first Monday of July, eighteen hundred and fifty-six, the plaintiff, by his counsel, O. H. Smith, esq., now files his declaration as amended, which is in the words and figures following, to wit:

Amended Declaration.

UNITED STATES,
District of Indiana, ss:

In the circuit court United States.

Samuel C. Pearce, a citizen of the State of Kentucky, plaintiff in this suit, complains of the Madison and Indianapolis Railroad Company, and the president and directors of the Peru and Indianapolis Railroad Company, citizens of the State of Indiana, being incorporated under the laws of the State of Indiana, and having each of their offices of business in said State of Indiana, in a plea of trespass on the case upon promises:

For that whereas, heretofore, to wit, on the 7th day of February, in the year 1854, at the State and circuit aforesaid, the said defendants having then and there consolidated their said corporations into one corporation, under the laws of the State of Indiana de facto, and by and under the name of the Madison, Indianapolis, and Peru Railroad Company, having then and there their joint office of business in said State and district, and then and there having one president and joint consolidated offices, and then and there transacted all their business in said consolidated name, and holding themselves out to the world as a consolidated company under said name, and then and there, for the purpose of increasing the busi-

ness of said consolidated railroad company, and for adding to the business earnings and profits of the same, purchased and received of and from one William McClain and others, citizens of the State of Ohio, a certain steamboat, called the "David White," of great value, to wit, of the value of $20,000, to run on the Ohio river in connection with said railroads, and sold and connected the said steamboat to their own use, and in consideration thereof the said consolidated railroad companies then and there, by their president, Erastus W. H. Ellis, by the description of "E. W. H. Ellis, pres't Mad. and Peru R. R. Co.," in part payment of said steamboat and the damages to the said William McClain, for the said conversion thereof as aforesaid, the said defendants so being, de facto, such consolidated railroad company, made their certain promissory note in writing of that date, by and under their said consolidated name, and then and there delivered the same to the said William McClain, and then and there thereby promised to pay, eighteen months after said date, by said consolidated name, to the order of said William McClain, a citizen of the State of Ohio, by the description of Capt. Wm. McClain, one thousand dollars, negotiable and payable at the branch of the State Bank of Indiana, at Madison, without any relief whatever from valuation or appraisement laws; and the said William McClain then and there, being a citizen of Ohio, endorsed and assigned the said promissory note, for value received, to the plaintiff, he being at said time a citizen of the State of Kentucky, and well knowing the consideration of said promissory note at the time the same became due and payable, was duly presented at said bank at Madison, and payment thereof duly demanded by the said plaintiff, and refused by the defendants; and said promissory note was then and there duly protested for non-payment, of which said defendants had notice.

2d count. And for that whereas also, heretofore, to wit, on the 7th day of February, in the year 1854, at the State and circuit aforesaid, the said defendants, so being one consolidated railroad company in fact, and so holding themselves out to the world as such consolidated railroad company, and so having their office of business in said State, for the consideration hereinbefore in the first count of this declaration stated, and for the purpose therein stated, then and there, by Erastus W. H. Ellis, the president of said consolidated railroad company, by the description of E. W. H. Ellis, pres't Mad. and Peru Railroad Company, in part payment for the said steamboat, and the said conversion thereof as aforesaid, the said defendants made their certain other promissory note in writing, bearing date on the said 7th day of February, 1854, by and under their said consolidated name, and thereby then and there promised, twenty-four months after the date thereof, to pay to the order of William McClain five hundred dollars, negotiable and payable at the branch of the State Bank of Indiana, at Madison, without any relief whatever from valuation or appraisement laws, and

then and there delivered the said promissory note to the said William McClain, who then and there, for value received, assigned and delivered the same to the said plaintiff, then and there being a citizen of the State of Kentucky, the plaintiff then and there having notice of the consideration of said promissory note. And the plaintiff in fact says, that when the said promissory note became due and payable, the same was duly presented for payment at said bank, and duly protested for non-payment, the same not being paid, but payment thereof refused by said defendants.

3d count. And for that whereas also, heretofore, to wit, on the 7th day of February, in the [year] 1854, at the State and circuit aforesaid, the said defendants, so being one consolidated railroad company in fact, and so holding themselves out to the world as such consolidated railroad company, and so having their business office in said State, for the consideration hereinbefore in the first count of this declaration stated as to that note, and for the purpose therein stated, then and there, by Erastus W. H. Ellis, the president of said consolidated railroad company, by the description of E. W. H. Ellis, pres't Mad. and Peru R. R. Co., in further part payment for the said steamboat, and the said conversion thereof as aforesaid, the said defendants made their certain other promissory note, bearing date on the day and year last aforesaid, and thereby then and there, for value received, promised, eighteen months after the date thereof, to pay to the order of said William McClain, a citizen of the State of Ohio, by the name and description of Capt. Wm. McClain, one thousand dollars, negotiable and payable at the State Bank of Indiana, at Madison, without any relief whatever from valuation or appraisement laws, and then and there delivered the said promissory note to the said William McClain, who then and there, for value received, assigned and delivered the said promissory note to the plaintiff, a citizen of the State of Kentucky, he having notice of the consideration of said promissory note. And the plaintiff in fact says, that when the said promissory note became due and payable, the same was presented for payment at said bank at Madison, and duly protested for non-payment, the same not being paid, but payment thereof refused by said defendants.

4th count. And for that whereas also, heretofore, to wit, on the 7th day of February, in the year 1854, at the State and circuit aforesaid, the said defendants, so being one consolidated railroad company, for the consideration hereinbefore in the first count of this declaration stated, and for the purpose therein stated, then and there, by Erastus W. H. Ellis, the president of said consolidated railroad company, in part payment of said steamboat, and the said conversion thereof as aforesaid, the said defendants made their certain other promissory note in writing, bearing date on said 7th day of February, in the year 1854, by and under their said consolidated name, and thereby then and there, for value received, promised, twenty-four months after the date thereof, to

pay to the order of William McClain, a citizen of the State of Ohio, by the name and description of Capt. Wm. McClain, negotiable and payable at the branch of the State Bank of Indiana, at Madison, one thousand dollars, without any relief whatever from valuation or appraisement laws, and then and there delivered the same to the said William McClain, who then and there delivered said note to the plaintiff, a citizen of the State of Kentucky, who had notice of the consideration thereof. And the plaintiff in fact says, that when the said promissory note became due and payable, the same was presented for payment at said bank at Madison, and duly protested for non-payment, the same not being paid, but payment thereof being refused by the defendants.

5th count. And for that whereas also, heretofore, to wit, on the 7th day of February, in the year 1854, at the State and circuit aforesaid, the said defendants, so being one consolidated railroad company in fact, for the consideration hereinbefore in the first count of this declaration stated, and for the purpose therein stated, then and there, by Erastus W. H. Ellis, the president of said consolidated railroad company, in part payment of said steamboat, and the conversion thereof to their own use as aforesaid, the said defendants made their certain other promissory note in writing, bearing date on the said 7th day of February, in the year 1854, by and under their said consolidated name, and thereby then and there, for value received, promised, twenty-four months after the date thereof, to pay to the order of William McClain, a citizen of the State of Ohio, by the name and description of Capt. Wm. McClain, one thousand dollars, negotiable and payable at the branch of the State Bank of Indiana, at Madison, then and there delivered said promissory note to the said William McClain, who then and there, for value received, assigned and delivered the same to the plaintiff, a citizen of the State of Kentucky, he having notice of the consideration of said promissory note as aforesaid. And the plaintiff in fact says, that the said promissory note was duly presented at said bank at Madison when the same became due and payable, and was then and there protested for non-payment, payment thereof having been then and there refused by said defendants. And the promissory notes in the first, second, third, fourth, and fifth counts of this declaration mentioned, and after the purchase, reception, and conversion of the said steamboat David White by said defendants, and after the delivery and assessment and notice thereof to said defendants of said several promissory notes, and before the commencement of this suit, the said consolidation of said railroad companies was amended, dissolved, and set aside by due course of law, and said defendants became, were, and are separate corporations of the State of Indiana, under separate charters, and liable to be sued in their separate corporation names or jointly as aforesaid for all their liabilities, and thereby became liable to pay the said promissory notes to the said plaintiff; and being so liable,

the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the circuit aforesaid, undertook and promised the plaintiff to pay him said several promissory notes, with the interest thereon, whenever he should be thereto afterwards requested.

Nevertheless the said defendants have never as yet, although often requested so to do, paid the said several sums of money in the said several counts in this declaration mentioned, or any part thereof, but have refused and still do refuse so to do, and said sums of money are still due and unpaid to the plaintiff, to his damage twenty thousand dollars; and therefore he sues.

O. H. SMITH, *Att'y for Plff.*

And afterwards, to wit, at a circuit court of the United States begun and holden at Indianapolis, in said district of Indiana, on the twenty-first day of November, in the year eighteen hundred and fifty-six, that being the fifth judicial day of the November term of said court for eighteen hundred and fifty-six—present the Hon. Elisha M. Huntington, judge of said court—come now the parties, by their attorneys, and the Madison and Indianapolis Railroad Company file their demurrers to plaintiff's amended declaration, in the words and figures following, to wit:

In the circuit court of the United States, district of Indiana, Nov. T., 1856.

SAMUEL C. PEARCE
vs.
THE MADISON AND INDIANAPOLIS RAILROAD Company, impleaded with the President and Directors of the Peru and Indianapolis Railroad Company.

And the said Madison and Indianapolis Railroad Company come and say actio non as to the 1st count of the plaintiff's amended declaration, because she says that said counts, and the matters and things therein contained, are not sufficient in law. Wherefore she prays judgment, &c.

And said defendant, as to the 2d count of said amended declaration, says that the said last-named count, and the matters and things therein contained, are not sufficient in law. Wherefore she prays judgment, &c.

And as to the 3d count of said amended declaration, said defendant says that the said last-named count, and the matters and things therein contained, are not sufficient in law. Wherefore she prays judgment, &c.

And as to the 4th count of said amended declaration, said defendant says that the said last-named count, and the matters and things therein contained, are not sufficient in law. Wherefore she prays judgment, &c.

And as to the 5th count of said amended declaration, said defendant also says actio non, because she says that the said last-named counts, and the matters and things therein contained, are not sufficient in law. Wherefore she prays judgment.

DUNN & HENDRICKS, and
YANDES & HINES,
Att'ys for M. & I. R. R. Co.

And the said Peru and Indianapolis Railroad Company, by their counsel, file the following demurrers to the plaintiff's amended declaration, in the words and figures following, to wit:

United States circuit court, Indiana district, Nov. T., 1856.

SAMUEL C. PEARCE,
vs.
THE PRESIDENT AND DIRECTORS OF THE Peru and Indianapolis Railroad Company, impleaded with the Madison and Indianapolis Railroad Company.

And the president and directors of the Peru and Indianapolis Railroad Company come, and as to the first counts of the plaintiff's amended declaration, say actio non, because they say that the matters and things therein set forth are not sufficient in law. Wherefore they pray judgment.

And as to the second count of the plaintiff's amended declaration, said last-named defendants say actio non, because they say that the matters and things therein set forth are not sufficient in law. Wherefore they pray judgment.

And as to the third amended count of the plaintiff's declaration, said defendants say actio non, because they say that the matters therein set forth are not sufficient in law. Wherefore they pray judgment.

And as to the 4th count of plaintiff's amended declaration, said defendants say actio non, because they say that the matters therein set forth are not sufficient in law. Wherefore they pray judgment.

And as to the 5th count of plaintiff's amended declaration, said defendants say actio non, because they say that said count, and the matters therein stated, are not sufficient in law. Wherefore they pray judgment.

NEWCOMB, HARVEY, & TARKINGTON,
Att'ys for P. and I. R. R. Co.

And now comes the plaintiff and files his joinders to the aforesaid demurrers, in these words, to wit:

And the plaintiff says that said counts in his declaration are sev-

erally good and sufficient in law to have and maintain said action; and this he is ready to verify. Wherefore he prays judgment, &c.

O. H. SMITH,
Att'y for Plaintiff.

And afterwards, to wit, on the 7th day of January, 1857, that being the thirty-seventh judicial day of the same November term as aforesaid—present the same judge as aforesaid—

The parties, by their attorneys, now come, and the plaintiff strikes out his common counts of the declaration; and the court being sufficiently advised of the issues at law heretofore made on demurrer, sustain said demurrers to said several special counts in the amended declaration. And the plaintiff now abiding by his said special counts, as good and sufficient in law for him to have and maintain the action in this behalf, and refusing to withdraw his joinder in demurrer and amend his declaration, it is considered by the court that said several special counts are severally insufficient in law for said plaintiff to have and maintain said action, and that said defendants, as to said action, go hence without day, and recover against said plaintiff their costs, taxed at dollars and cents.

And thereupon the plaintiff, by his counsel, prays an appeal to the Supreme Court, which is granted on the appellant filing bond, in the penalty of three hundred dollars, with O. H. Smith as security, which is approved by the court. And thereupon the appellant now files his bond for the appeal in these words, to wit:

Know all men by these presents, that I, Oliver H. Smith, am held and firmly bound unto the Madison and Indianapolis Railroad Company and the president and directors of the Peru and Indianapolis Railroad Company, in the penal sum of three hundred dollars, to the payment whereof, well and truly to be made, I bind myself and heirs firmly by these presents. Sealed with my seal, and dated this 7th day of January, 1857.

The condition of the obligation is such, that whereas Samuel C. Pearce has prosecuted a writ of error to the Supreme Court of the United States, from the judgment of the circuit court of the United States for the district of Indiana, in a case therein in which the said railroad companies are defendants and the said Samuel C. Pearce is plaintiff:

Now should the said Samuel C. Pearce well and truly prosecute said writ of error, and pay and satisfy all costs that may be adjudged against him on said appeal and writ of error, then the above obligation to be void, else to be and remain in force.

O. H. SMITH, [SEAL.]

Approved January 7th, 1857.

And the following writ of error, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the seventh circuit and district of Indiana:

Because in the record and proceedings, and also in the rendition of the judgment in the said seventh circuit and district of Indiana, wherein Samuel C. Pearce is plaintiff and the Madison and Indianapolis Railroad Company and the president and directors of the Peru and Indianapolis Railroad Company are defendants, manifest error hath happened, to the great damage of the said Samuel C. Pearce, as by his complaint appears, and we being willing that the error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 7th day of January, A. D. 1857, at Indianapolis.

In testimony whereof, I, Horace Bassett, clerk of said circuit court, have hereunto set my hand, and affixed the seal of said court, at Indianapolis, the day and year last aforesaid.

[SEAL.]

HORACE BASSETT, *Clerk.*

And also the following citation and service, in the words and figures following, to wit:

UNITED STATES OF AMERICA.

To the Madison and Indianapolis Railroad Company and the president, directors, and company of the Peru and Indianapolis Railroad Company:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December, 1857, next, in pursuance to a writ of error filed in the clerk's office of the circuit court of the United States for the seventh circuit and district of Indiana, wherein Samuel C. Pearce is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the

said writ of error mentioned should not be corrected and reversed, and speedy justice should not be done to the parties in this behalf.

Witness Hon. Elisha M. Huntington, district judge of the United States for the district of Indiana, this 7th day of January, in the year 1857.

E. M. HUNTINGTON.

The above citation served by copy on Simon Yandes and H. C. Newcomb, esquires, counsel for the defendants in error, this 7th day of January, 1857.

JOHN L. ROBINSON,
U. S. Marshal.
By JESSE D. CARMICHAEL,
Deputy.

DISTRICT OF INDIANA, *ss*:

I, Horace Bassett, clerk of said circuit court, do hereby certify the above and foregoing to be a true and complete transcript of the record now in my office in the above-entitled case, together with the cost of this copy, and the service of citation, taxed at ($20 70) twenty dollars and seventy cents.

In testimony whereof, I have hereto set my hand and affixed the [SEAL.] seal of said circuit court, at Indianapolis, this 10th day of February, in the year of our Lord eighteen hundred and fifty-seven.

H. BASSETT, *Clerk.*

UNITED STATES OF AMERICA, *ss*:

In the Supreme Court of the United States, of the term of December, A. D. 1857.

SAMUEL PEARCE, appellant,
vs.
THE MADISON AND INDIANAPOLIS RAILroad Company, and the president and directors of the Peru and Indianapolis Railroad Company, appellees.

And now at this day, to wit, on the first judicial day of the court aforesaid, of the term aforesaid, comes the said appellant, by his counsel, and says that in the record and proceedings, and in the rendition of the judgment of the court in the above cause, manifest errors have intervened in this:

The final judgment of the circuit court was given for the appellees, when by the law of the land the judgment should have been rendered for the appellant.

Second. The circuit court erred in sustaining the demurrer to the first count in the declaration.

Third. The circuit court erred in sustaining the demurrer to the second count in the declaration as amended.

Fourth. The circuit court erred in sustaining the demurrer to the third count in the declaration as amended.

Fifth. The circuit court erred in sustaining the demurrer to the fourth count in the declaration as amended.

Sixth. The circuit court erred in sustaining the demurrer to the fifth count in the declaration as amended.

For which errors and other in the record the appellant prays that the judgment of the circuit court may be reversed, and he may be restored to all things he has lost thereby.

O. H. SMITH,
Att'y for Appellant.